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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/439,054	11/12/1999	CARL PHILLIP GUSLER	AT9-99-234	1182

7590 01/30/2002

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EXAMINER

LE, DEBBIE M

ART UNIT	PAPER NUMBER
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2177

DATE MAILED: 01/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/439,054	GUSLER ET AL.
	Examiner	Art Unit
	DEBBIE M LE	2177

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U S C § 133)
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 12 November 1999.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-33 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-33 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) 5)  Notice of Informal Patent Application (PTO-152)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_. 6)  Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-7, 13, 17-23, 29, 33 are rejected under 35 U.S.C. 102(e) as being anticipated by Zulch (US Patent 5,966,730).

As per claim 1, Zulch, according to figs. 1-6, shows a backup system in which a table file is build, wherein the table file lists filesystems to be backed up (see figs. 3a-3b, 4) and can be accessed thereto (see figs. 2) and also can be backed-up a filesystem (fig 2).

As per claims 2-3, Zulch teaches wherein the table file contains a backup technique to be used for backing up each listed filesystem, wherein backing up further

comprises using a backup technique listed in the table file (see the respective disclosure of figure 2, 3a-b, col. 5-6).

As per claim 4-6, Zulch teaches wherein the table file comprises logical location of the filesystem to be backed up, at least one backup copy, a number of copies to be created (figs. 2-4, col. 5-7).

As per claim 7, Zulch teaches prior to back up the filesystem, splitting the filesystem on the basis of the filesystem being in use during backing up the filesystem (col. 1-2).

As per claim 13, Zulch teaches backing up the filesystem is performed by an automated script (figs. 2-5, col. 5-8).

Claims 17 and 33 are rejected by the same rationale as stated in independent claim 1 argument.

Claims 18-23, 29 have the same limitations as claims 2-7, 13; therefore, they are rejected under the same subject matter.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-13, 14-16, 24-26, 27-28, 30-32 rejected under 35 U.S.C. 103(a) as being unpatentable over Zulch (US Patent 5,966,730).

As per claims 8-10, Zulch does not explicitly teach the steps of prior to backing up the filesystem, locking the table file detecting an error, unlocking the table file, editing the table file, re-syncing logical volumes. However, using the steps of locking the table file detecting an error, unlocking the table file, editing the table file, re-syncing is considered as obvious choice of implementations to one of ordinary skill in the art in order to obtain an backup and recovery data in an efficient and reliability in a back up system.

As per claim 11-12, 14-16, Zulch teaches backing up the filesystem is performed by an automated script (figs. 2-5, col. 5-8) except for using automated script to build, access, unlock table file, re-sync logical volumes, split the filesystem. However, using automated script to build, access, unlock table file, re-sync logical volumes, split the filesystem backup system of Zulch is considered as obvious variation to one of ordinary skill in skill in the art in order to obtain an alternative embodiment without any unexpected results.

Claims 24-26 have the same limitations as claims 8-9; therefore, they are rejected under the same subject matter.

Claims 27-28, 30-32 have the same limitations as claims 14-16; therefore, they are rejected under the same subject matter.

### ***Conclusion***

If a reference indicated as being mailed on PTO-FORM 892 has not been enclosed in this action, please contact Lisa Craney whose phone number is (703) 305-9601 for faster service.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEBBIE M LE whose telephone number is 703-308-6049. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOHN BREENE can be reached on 703-305-9790. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-7960.



Debbie Le  
January 24, 2002

DEBBIE M LE  
Examiner  
Art Unit 2177



JOHN BREENE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100